

Dated: May 26, 2020



Daniel P. Collins, Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re:

BLUE ICE INVESTMENTS, LLC,
STARPLEX CORPORATION,
Debtors.

In Chapter 11 Proceedings

Case No: 2:20-bk-02208-DPC Case No:
2:20-bk-02224-EPB

(Jointly administered under Case No: 2:20-
bk-02208-DPC)

2:20-ap-00095-DPC

This filing applies to:

☐ All Debtors

☒ Specified Debtors

STARPLEX CORPORATION,

Plaintiff,

v.

JOVITA CARRANZA, in her capacity as
administrator for the Small Business
Administration,

Defendant.

**ORDER DENYING PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION**

Upon consideration of Plaintiff's Motion for Preliminary Injunction (Dkt. 3), Defendant's Opposition thereto (Dkt. 15), Plaintiff's Reply brief (Dkt. 20), Defendant's Surreply brief (Dkt. 26), and Plaintiff's Response to Defendant's Surreply (Dkt. 27), and following hearing held on May 21, 2020, for reasons stated by the Court on the record at the hearing:

IT IS HEREBY HELD that:

- A. The Court has jurisdiction to address Plaintiff's claim for preliminary injunctive relief based on its claim under Count II of its Amended Complaint (Dkt. 18), alleging violation of 11 U.S.C. § 525, because that claim is core under 28 U.S.C. § 157.
- B. Defendant waived its sovereign immunity in 11 U.S.C. § 106 to Plaintiff's claim under 11 U.S.C. § 525.
- C. Plaintiff is not likely to succeed on the merits of its claim under 11 U.S.C. § 525 because that section does not apply to loans made under the Payroll Protection program (PPP) of the CARES Act, Pub. L. 116-136.
- D. The Court does not have jurisdiction to award preliminary injunctive relief on Plaintiff's claims under the Administrative Procedure Act (APA) (Count I of the amended complaint) because those claims are non-core. The Court may only issue findings of fact and conclusions of law on the APA claims to submit to the district court.

1 E. For the reasons stated on the record, the Court concludes as follows:

- 2 a. Defendant has waived immunity under 5 U.S.C. § 702 for preliminary
3 injunctive relief.
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5 b. Plaintiff is not likely to succeed on the merits of its APA claims because
6 the Defendant acted within its authority in excluding debtors in
7 bankruptcy from the PPP, and excluding debtors in bankruptcy from the
8 PPP was not unreasonable.
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10 F. Following the hearing, the Defendant moved, and the Court ordered, dismissal
11 of the amended complaint without prejudice, thus mooted the need to forward
12 conclusions to the district court.
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14 **IT IS HEREBY ORDERED** that Plaintiff's Motion for Preliminary Injunction
15 based on Count II of its amended complaint is DENIED;
16 **SO ORDERED** as of the date set forth above.
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